

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed December 15, 2004. At the time of the Final Office Action, Claims 7-28 were pending in this Application. Claims 1-6 were previously cancelled by Applicants. Claims 7-28 stand rejected. Applicants amend Claims 7 and 24. Applicants respectfully request reconsideration and favorable action in this case.

Rejections under 35 U.S.C. § 112

Claims 7-28 were rejected by the Examiner under 35 U.S.C. §112, second paragraph, as being indefinite and failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants amend Claim 7 to overcome these rejections and respectfully request full allowance of Claim 17-28 as amended. In relation to the term “fusion source,” Applicants direct the Examiner’s attention to page 31 of the specification wherein it is stated:

In addition, while boron nitride is preferred, it is also believed that SiBx, B₄C and B and other sources can also be used as bonding or fluxing agents. As stated, boron nitride is believed to be preferred because it is believed, due to its stability, it permits a more uniform fusion to fiber junction and yields superior bonding and uniform porosity.

(emphasis added)

Consequently, Applicants submit “fusion source” is well understood by one of ordinary skill in the art from reading the present specification.

Rejections under 35 U.S.C. §103

Claims 7-22 and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,030,233 issued to Paul Ducheyne (“Ducheyne”) in view of U.S. Patent 5,681,572 issued to William J. Seare, Jr. (“Seare”). Applicants respectfully traverse and submit the cited art

combinations, even if proper, which Applicants do not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Furthermore, according to § 2143 of the Manual of Patent Examining Procedure, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

However, to move this application forward, in light of a myriad of possible infringers, Applicants amend independent Claim 7 to more particularly define the claimed invention. Specifically, Applicants have amended Claim 7 to incorporate the limitations of Claim 23 which was previously indicated by the Examiner as allowable, for which the Applicants are thankful. Consequently, Applicants submit independent Claim 7, and its dependents, i.e., Claims 8-22, 24-26 and 28, are in condition for allowance and request favorable action.

In addition, Applicant submits new Claim 29 directed to an embodiment of the present invention wherein the fibers are limited to non-metal fibers. Applicant submits new Claim 29 is patentable over the combination of Ducheyne and Seare for the same reasons the Examiner previously indicated Claim 23 was allowable. In addition, it is noted that Ducheyne does disclose a fiber system which includes a "fusion source," e.g., boron or boron nitride, etc. Ducheyne merely discloses the "sintering" of crossing fibers of metal, i.e., heating of the metal fibers. This fact further distinguishes the presently claimed system from the combination of Ducheyne and Seare. In addition, Ducheyne teaches filling pores on one side of his/her flexible

material with “bone cement.” New claim 29 is also directed to a “rigid body” not a flexible body as disclosed by Ducheyne.

It is respectfully submitted that the subject matter of new Claim 29 has already been searched and thus, is in condition for allowance. Favorable action is respectfully requested.

Change of Correspondence Address

Applicants respectfully request that all papers pertaining to the above-captioned patent application be directed to Customer No. 31625 and all telephone calls should be directed to Bruce W. Slayden II at 512.322.2606. Applicants enclose a Change of Correspondence Address Form for the U.S. Patent and Trademark Office’s records.

Allowable Subject Matter

Applicants appreciate Examiner’s consideration and indication that Claims 23-27 would be allowable to include all of the limitations of the base claim and any intervening claims. Applicants submit amended Claim 7 incorporating the elements of allowable Claim 23 and base Claim 7. Applicants submit amended Claim 7 and its dependents are in condition for allowance and requests favorable action.

ATTORNEY DOCKET
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PATENT APPLICATION
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CONCLUSION

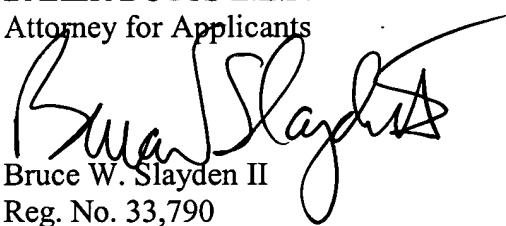
Applicants have now made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicants respectfully request reconsideration of Claims 7 and 24, as amended.

Applicants believe there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees to Deposit Account No. 50-2148 of Baker Botts L.L.P. in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicants' attorney at 512.322.2606.

Respectfully submitted,
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